

AMENDED IN SENATE AUGUST 24, 2012

AMENDED IN SENATE AUGUST 21, 2012

AMENDED IN SENATE JULY 2, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

AMENDED IN ASSEMBLY APRIL 19, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2508**

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**Introduced by Assembly Member Bonilla**  
**(Coauthor: Assembly Member Beall)**  
*(Coauthor: Senator Rubio)*

February 24, 2012

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An act to add Chapter 3.7 (commencing with Section 12140) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2508, as amended, Bonilla. Public contracts: public health agencies.

Existing law requires a state agency to comply with specified procedures in awarding agency contracts.

This bill would prohibit, with specified exceptions, a state agency authorized to enter into contracts relating to public benefit programs from contracting for services provided by a call center that directly serves applicants for, recipients of, or enrollees in, those public benefit

programs with a contractor or subcontractor unless that contractor or subcontractor certifies in its bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers employed in California. This bill would impose a civil penalty, as provided, for knowingly providing false information in that certification. ~~This bill would specify that the Governor may waive these requirements during a declared emergency.~~ This bill would also require the contract to include a clause *providing for termination a right by the state to terminate the contract* for noncompliance and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers not employed in California during the life of the contract. *This bill would allow a state agency to conduct a solicitation without applying the provisions described above if the California Health and Human Services Agency or the board of the California Health Benefit Exchange makes certain determinations, including if a prior solicitation was conducted and the bids received were priced unreasonably high as a result of including these provisions.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) The federal and state economies are recovering from the
- 3 great recession and California still has a high unemployment rate.
- 4 Millions of Californians are not working or are working less than
- 5 they want and need full-time employment. California continues
- 6 to allow state public benefit call center contracts to be awarded to
- 7 contractors that perform the work outside the United States.
- 8 (b) By contracting and subcontracting outside of the country,
- 9 jobs are displaced in the United States and in California, and
- 10 taxpayer dollars are used to create jobs in foreign countries. State
- 11 tax revenues should be used to create jobs in the United States and
- 12 in California, especially when the taxpayer dollars are designated
- 13 for programs meant to create jobs and address problems associated
- 14 with joblessness.
- 15 SEC. 2. Chapter 3.7 (commencing with Section 12140) is added
- 16 to Part 2 of Division 2 of the Public Contract Code, to read:

CHAPTER 3.7. PROHIBITION OF THE OFFSHORING OF STATE  
PUBLIC BENEFITS CONTRACTS

12140. (a) Notwithstanding any other law, any state agency authorized to enter into contracts relating to public benefit programs shall only contract for services provided by a call center that directly serves applicants for, recipients of, or enrollees in, those public benefit programs with a contractor that certifies in its bid for the contract that the services provided under the contract and any subcontract performed under that contract, to applicants for, recipients of, or enrollees in, those public benefit programs, will be performed solely with workers employed in California. Any contractor that knowingly provides false information in the certification required by this subdivision shall be subject to a civil penalty in an amount of up to ten thousand dollars (\$10,000), in addition to any other remedies available to the state agency. An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California.

(b) For purposes of this section:

(1) “Call center” means a building, facility, or operation where customer or client services or assistance is provided by telephone, fax, e-mail, text, or Web-based interaction.

(2) “Public benefit programs” means California Work Opportunity and Responsibility to Kids (CalWORKs), CalFresh, Medi-Cal, Healthy Families, and the California Healthcare Eligibility, Enrollment, and Retention System.

(c) (1) The contract shall provide that in the event a contractor or subcontractor performs the contract or the subcontract for call center services with workers not employed in California during the life of the contract, *the state has the right to terminate the contract* ~~shall be terminated~~ for noncompliance and the contractor or subcontractor shall pay a penalty to the state agency in an amount equal to the amount paid by the state agency for the percentage of work that was performed with workers not employed in California.

(2) The penalty authorized in paragraph (1) shall be in addition to any other applicable penalty, including, but not limited to, the penalty provided in subdivision (a).

~~(d) The requirements of subdivision (a) shall not apply if the Governor waives those requirements pursuant to Section 8571 of the Government Code.~~

*(d) (1) Notwithstanding subdivision (a), a state agency may conduct a solicitation without applying this section if the California Health and Human Services Agency or the board of the California Health Benefit Exchange makes any of the following determinations:*

*(A) A prior solicitation was conducted and the bids received were priced unreasonably high as a result of including these provisions.*

*(B) A prior solicitation was conducted and fewer than two bids were received as a result of including these provisions.*

*(C) The services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare or safety.*

*(2) If the agency or board makes a determination described in paragraph (1), that entity shall submit a report to the Assembly Committee on Jobs, Economic Development and the Economy and to the Senate Committee on Labor and Industrial Relations on or before the last day of the quarter following the quarter in which the determination was made. The report shall include the reason for making the determination.*

*(e) This section shall not apply to the following:*

~~(1) A contract, if the refusal to award that contract, on the basis that the contractor or subcontractor does not certify that the contract and any subcontract performed under that contract will be performed solely with workers employed in California, would~~

*(1) A contract or subcontract, if implementation would violate the specific terms of the Agreement on Government Procurement of the World Trade Organization or any other bilateral or regional free trade agreement to which the State of California has consented.*

~~(2) A contract or subcontract, currently in place, if the application of this section would result in a violation of the terms of the contract, but upon expiration of that contract, these provisions shall be added before a new contract can be executed or the contract renewed.~~

*(2) A contract or subcontract, including extensions of that contract or subcontract, that results from a request for proposal*

1 *or bid that occurred prior to the effective date of the act that adds*  
2 *this chapter.*

3 (3) A contract for a public benefit program between a state  
4 agency and a health care service plan or a specialized health care  
5 service plan regulated by the Department of Managed Health Care,  
6 and any subcontract performed under that contract, or a disability  
7 insurer or specialized health insurer regulated by the Department  
8 of Insurance, and any subcontract performed under that contract.

9 (f) This section shall be construed so as to not conflict with, and  
10 be applied consistent with, federal law.

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